

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**LAND DIVISION
DRYCLEANING TRUST FUND PROGRAM**

DIVISION 335-16

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CITE AS

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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

LAND DIVISION

DRYCLEANING TRUST FUND PROGRAM

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**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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**CHAPTER 335-16-1
GENERAL**

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335-16-1-.01 Purpose
335-16-1-.02 Definitions

335-16-1-.01 Purpose. These regulations have been promulgated pursuant to the Alabama Drycleaning Environmental Response Trust Fund Act, Code of Alabama 1975, § 22-30D-1 et seq., henceforth referred to as "the Act". The purpose of the Alabama Drycleaning Environmental Response Trust Fund Program is to establish the ADEM Administrative Code Regulations necessary for the administration and enforcement of the Act by:

(a) The establishment of performance standards for new drycleaning facilities and new wholesale distribution facilities first brought into use on or after May 24, 2003;

(b) The establishment of a schedule for the retrofit of drycleaning facilities and wholesale distribution facilities that were in existence prior to May 24, 2000;

(c) The establishment of criteria for the reporting of suspected contamination or the discovery of contamination by site(s) as defined in 335-16-1-.02;

(d) The establishment of requirements for the initial investigation, assessment and remediation of contamination resulting from various types of drycleaner facilities, abandoned drycleaner facilities, wholesale distribution facilities, impacted third parties or adjacent landowners as defined in 335-16-1-.02.

Authors: Pamela R. Wilson and Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, §§ 22-30D-1 and 22-30D-4.

History: July 25, 2003.

335-16-1-.02 Definitions. Unless otherwise defined in ADEM Admin. Code R. 335-16-1 through 335-16-6, the following words and terms shall have the meanings given below:

(a) "Abandoned drycleaning facility" is any real property premises or individual leasehold space owned by an eligible entity in which a drycleaning facility or wholesale distribution facility formerly operated.

(b) "ADEM" means the Alabama Department of Environmental Management as established by Code of Alabama 1975, § 22-22A-4.

(c) "ADERTFA" or "the Act" means the Alabama Drycleaning Environmental Response Trust Fund Act, Code of Alabama 1975, § 22-30D-1 et seq.

(d) "Adjacent land owner" is any owner, lessor, or mortgagee of any real property onto which contamination from an eligible site has migrated or is threatening to migrate; or any of the successors or assigns, predecessors-in-title, and successors-in-title of the foregoing.

(e) "AHWMMA" means the Alabama Hazardous Waste Management and Minimization Act of 1978, as amended, Code of Alabama 1975, §§ 22-30-1 et seq.

(f) "Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(g) "Board" means the Alabama Drycleaning Environmental Response Trust Advisory Board created by Code of Alabama 1975, § 22-30D-8.

(h) "Certification" means a statement of professional opinion based upon knowledge and belief.

(i) "Cleanup Properties Inventory" means the list compiled and updated as necessary by the Department pursuant to 335-16-7-.02 for all qualifying properties for which contamination has been discovered.

(j) "Commercial hazardous waste disposal facility" is one receiving hazardous waste not generated on-site for disposal and to which a fee is paid or other compensation is given for disposal.

(k) "Contamination" means the presence of drycleaning agent in soil, groundwater, surface water, or any other medium at or on a drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property of any impacted third party.

(l) "Contractor" means a person or business that contracts to perform work.

(m) "Department" means the Alabama Department of Environmental Management or its successor department or agency of the state.

(n) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(o) "Director" means the Director of the Alabama Department of Environmental Management or his designee.

(p) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, or dumping of hazardous waste into or on any land or water.

(q) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or any hazardous constituent thereof which may enter the environment or be emitted into the air or discharged into any waters including groundwater.

(r) "Drycleaning agent" means any non-hydrocarbon chlorine or hydrocarbon-based formulations or products used or to be used as a primary cleaning agent in the cleaning of garments, apparel, or household fabrics at a drycleaning facility and includes, but is not limited to, perchloroethylene, also known as tetrachloroethylene, other chemicals using CAS No. 127-18-4, solvent-charged detergent, spotting agents, glutone and any other chlorine or petroleum-based formulations or products and the substances into which any such formulations or products degrade.

(s) "Drycleaning facility" means a place of business, located at or on any real property premises or individual leasehold space located in this state which operates, or has operated in the past, in whole or in part, a commercial facility for the purpose of laundering or cleaning garments, apparel, or household fabrics for the general public using any process that involves the use of drycleaning agents. The term "drycleaning facility" specifically includes: All contiguous land, structures, and other appurtenances and improvements on the land used in connection with a drycleaning facility; tuxedo rental facilities renting to the public which conduct drycleaning operations on the premises; and "route sales," "dry store," or "pick-up store". The following facilities are excepted from the definition of "drycleaning facility":

1. A "stand-alone" coin operated laundry or a coin operated drycleaning facility;

2. A facility located on a United States military base or owned by the United States, or any department or agency thereof;

3. A facility owned or leased by the state, any county, town, or public or quasi-public organization of the state, any public subdivision thereof, or any agency or department thereof, or any body corporate or system of the state under the management or administration of a board of control or governing board established by the state;

4. A facility primarily engaged in uniform service or linen supply;

5. Prison, hotel, motel, or industrial drycleaners not providing services to the general public, hospitals, or nursing homes; or

6. Any facility owned or leased by any owner or operator who shall elect not to be covered by the Act.

(t) "Engineer" means a person registered as a professional engineer with the State of Alabama Board of Registration for Professional Engineers and Land Surveyors.

(u) "Eligible entity" means any person owning a drycleaning facility, abandoned drycleaning facility, or a wholesale distribution facility, or an impacted third party, or adjacent landowner(s) who elected to be covered by the Act.

(v) "Eligible site" means any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or adjacent land that is covered by the Act as a result of election for coverage by the owner, operator or impacted third party.

(w) "EPA" means the United States Environmental Protection Agency.

(x) "Existing drycleaning facility" means any drycleaning facility which is currently in operation and that was in operation prior to May 24, 2000 and has elected to be covered under the Act.

(y) "Facility" is a term synonymous with "site".

(z) "Fund" means the Alabama Drycleaning Environmental Response Trust Fund created by Code of Alabama 1975 § 22-30D-5.

(aa) "Generator" means any person, by individual generation site, whose act or process produces hazardous waste identified or listed in Chapter 335-14-2 or whose act first causes a hazardous waste to become subject to regulation.

(bb) "Geologist" means a person registered as a professional geologist with the State of Alabama under the Alabama Professional Geologist Licensing Act.

(cc) "Groundwater" means water below the land surface in a zone of saturation.

(dd) "Hazardous substance" means any substance included on the List of Hazardous Substances and Reportable Quantities, codified as 40 CFR Part 302, Table 302.4, in force and effect on the effective date of 335-16 and subsequent revisions thereof, or any substance listed on the List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 CFR Part 355, Appendix A, in force and effect on the effective date of 335-16 and subsequent revisions thereof.

(ee) "Hazardous waste" means a hazardous waste as defined in 335-14-2-.01(3).

(ff) "Hazardous Waste Treatment, Storage, or Disposal Facility" means any property or facility which is intended or used for the treatment, storage, or disposal of hazardous waste subject to the permit requirements of ADEM Admin. Code 335-14-8.

(gg) "Impacted third party" is any person who is or has been an owner, lessor, or mortgagee of real property on which an eligible site is or has been located.

(hh) "Land Use Controls" means any restriction or control, which serves to protect human health and/or the environment, that limits use of and/or exposure to, any portion of a property, including water resources. These controls may include:

1. Engineering controls which are remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater conveyance systems, slurry walls, liner systems, caps, leachate collection systems, pump and treat systems, and groundwater recovery systems.

2. Institutional controls which are legal or contractual restrictions on property use that remain effective after remediation is completed and are used to meet remediation levels. The term may include, but is not limited to, deed notations, deed restrictions and/or, water use restrictions, restrictive covenants, conservation easements, and limited development rights.

3. Water use restrictions which can be placed on the use of a particular water supply source that has been identified as being contaminated with hazardous substances or other contaminants in order to protect human health and the environment.

(ii) "Manifest" means the form adopted by the Department used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(jj) "New Drycleaning Facility" means any drycleaning facility that began operation after May 23, 2003.

(kk) "Other waste" is wastes as defined in ADEM Admin. Code R. 335-14-1-.02.

(ll) "Owner or Operator" means any person who owns or leases an active or abandoned drycleaning facility or distribution facility, who is or has been responsible for operations at such facility and who elected to be covered by the Act.

(mm) "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, or limited liability company. Person does not include any governmental organization.

(nn) "Preexisting release" means a release which occurred prior to election for coverage under Alabama Drycleaning Environmental Response Trust Fund Act by an eligible entity.

(oo) "Property" is synonymous with "facility" and includes any or all of the following:

1. Any land, building, structure, installation, equipment, pipe or pipeline, sewer or publicly owned treatment works, pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, or storage container.

2. Any site or area where a hazardous waste, hazardous constituent, hazardous substance or petroleum product has been deposited, discharged, stored, disposed of, placed, or has otherwise come to be located.

3. A parcel of land defined by the boundaries in the deed.

(pp) "Registration fee" means the fees required to be paid pursuant to Section 6 of the Act by each owner or operator of any drycleaning facility operating in this state who shall elect to be covered by the Act and by each wholesale distributor selling to drycleaning facilities in this state who shall elect to be covered by the Act.

(qq) "Release" means any actual spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning agents at or from a drycleaning facility or wholesale distribution facility into the soils or waters of the state.

(rr) "Remediation level" means the concentration of a contaminant, and applicable control, that is protective of human health and the environment.

(ss) "Reportable quantity" is a known release of a drycleaning agent in excess of the federal reporting standards.

(tt) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for cleanup.

(uu) "Responsible person" means any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent, or hazardous substance at a property.

(vv) "Risk assessment" means the process used to determine the risk posed by contaminants that have been released into the environment at the site. The process includes a written site specific evaluation which includes

elements that encompass, but are not limited to, the identification of the contaminants present in the environmental media, the assessment of exposure and exposure pathways, the assessment of the toxicity of the contaminants present at the site, the characterization of risks to humans, and the characterization of the impacts or risks to the environment.

(ww) "Site" means any land on which a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility is or has been physically located.

(xx) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water treatment plant, or air pollution control device, exclusive of the treated effluent from a wastewater treatment plant.

(yy) "State" means the State of Alabama.

(zz) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes.

(aaa) "Subsidiary" has the same meaning as in the 17 CFR 240.12b-2 (1 April 1996 Edition).

(bbb) "Wholesale distribution facility" means a place of business or any real property premises or individual leasehold space, occupied by a wholesale distributor.

(ccc) "Wholesale distributor" is any person whose primary business is selling drycleaning agents and supplies to drycleaning facilities and elects to be covered by the Act.

Authors: Lawrence A. Norris; Pamela R. Wilson.

Statutory Authority: Code of Alabama 1975, § 22-30D-3 and 22-30D-4.

History: July 25, 2003.

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**CHAPTER 335-16-2
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335-16-2-.01 Criteria for Coverage by the Act

335-16-2-.01 Criteria for Coverage by the Act.

(1) Existing drycleaning facilities, abandoned drycleaning facilities and wholesale distributing facilities, are covered by the Fund under this program provided the following criteria are met:

(a) Pursuant to Code of Alabama 1975, § 22-30D-4, the owner(s) or operator(s) have elected to participate in the program and have so notified the Department.

(b) The appropriate registration fees are paid to the Alabama Department of Revenue.

(2) New owners or operators of existing facilities who elect to be covered under the fund shall:

(a) Notify and register with the Department;

(b) Submit to the Alabama Department of Revenue those fees described in Code of Alabama 1976, § 22-30D-6.

(3) Owners, operators establishing new drycleaning and or wholesale distribution facilities who elect to be covered by the Fund shall:

(a) Register each new facility with the Department within thirty (30) days of the commencement of operation;

(b) Submit registration form(s) to the Alabama Department of Revenue within thirty (30) days of the initiation of business; and

(c) Submit to the Alabama Department of Revenue those fees described in Code of Alabama 1976, § 22-30D-6.

(4) Wholesale distributors who elect to be covered under the fund shall:

(a) Notify and register with the Department;

(b) Submit registration form(s) to the Alabama Department of Revenue within thirty (30) days of the opening; and

(b) Submit registration form(s) to the Alabama Department of Revenue within thirty (30) days of the initiation of business; and

(c) Submit to the Alabama Department of Revenue those fees described in Code of Alabama 1976, § 22-30D-6.

(5) Owners, operators and wholesale distributors of existing facilities who did not elect to participate in the Fund are:

(a) Relieved of any obligations, including those to register or pay registration fees, imposed on owners, owners and wholesale distributors who elected to be covered under the terms of the Act

(b) Prohibited from receiving Fund money for any costs incurred at the site or at any real property of any impacted party or adjacent landowner.

(6) Pursuant to Code of Alabama 1976, § 22-30D-7, the following sites are excluded from coverage:

(a) Sites that are contaminated by drycleaning agents where the contamination at such sites did not result from the operation of a drycleaning, abandoned drycleaning, or wholesale distribution facility;

(b) Sites that are not drycleaning, abandoned drycleaning, or wholesale distribution facilities, or the real property of impacted third parties or adjacent landowners, but are contaminated by a release from drycleaning agents being transported to or from drycleaning, abandoned drycleaning, or wholesale distribution facilities;

(c) Any drycleaning, abandoned drycleaning, or wholesale distribution facility, or any property of any impacted third party or adjacent landowner that has been, or is in the future, identified by USEPA as a federal superfund site pursuant to 40 CFR 300 et seq.;

(d) Any drycleaning, abandoned drycleaning, or wholesale distribution facility, or any property of any impacted third party or adjacent landowner which has a treatment, storage, or disposal permit pursuant to the federal Resource Conservation and Recovery Act (RCRA) or AHWMMMA regulations;

(e) Any drycleaning, abandoned drycleaning, or wholesale distribution facility, or any real property owned or leased by any entity who did not elect to be covered by the Act or any impacted third party or adjacent landowner impacted by or adjacent to any such a site; and/or

(f) Any owner, operator, impacted third party, or adjacent landowner who fails to pay, or is delinquent in payment of fees required by the Act.

(7) Coverage by the Fund shall be effective on the date that a written notice of election is received by the Department.

Authors: Lawrence A. Norris; Pamela R. Wilson.

Statutory Authority: Code of Alabama 1975, § 22-30D-4, 22-30D-6 and 22-30D-7.

History: July 25, 2003.

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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**CHAPTER 335-16-3
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335-16-3-.01 General

335-16-3-.01 General.

(1) Purpose, scope, and applicability.

(a) ADEM Admin. Code R. 335-16-3 establishes standards for new and existing drycleaning facilities, abandoned drycleaning facilities and new and existing wholesale distributing facilities that are:

1. Generators of hazardous waste, and
2. Generators of other waste destined for disposal at commercial hazardous waste disposal facilities located in the State of Alabama.

(b) ADEM Admin. Code R. 335-14-2-.01(5)(c) and (d) must be used to determine the applicability of the provisions of 335-16-3 that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) In addition to the requirements of ADEM Admin. Code Chapters 335-14-5 through 335-14-9, a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility which treats, stores, or disposes of hazardous waste on-site must comply with the following with respect to that waste:

1. ADEM Admin. Code R. 335-14-3-.01(2) for determining whether or not the facility produces a hazardous waste;
2. ADEM Admin. Code R. 335-14-3-.01(3) for obtaining an EPA identification number;
3. If applicable, ADEM Admin. Code R. 335-14-3-.01(4) for submittal of Annual Submission of ADEM Form 8700-12, Notification of Regulated Waste Activity and Certifications of Waste Management;
4. ADEM Admin. Code R. 335-14-3-.03(5) for accumulation of hazardous waste;
5. ADEM Admin. Code R. 335-14-3-.04(1)(c) and (d) for recordkeeping requirements;

6. ADEM Admin. Code R. 335-14-3-.04(4) for additional reporting requirements;

7. ADEM Admin. Code R. 335-14-3-.02 for hazardous waste manifest procedures;

8. ADEM Admin. Code R. 335-14-3-.03 for pre-transport requirements; and

9. ADEM Admin. Code R. 335-14-3-.08 for special requirements for Generators of waste destined for disposal at Commercial Hazardous Waste Disposal Facilities Located in the State of Alabama.

(d) The drycleaning, abandoned drycleaning, or wholesale distribution facility responsible for the generation of other waste destined for disposal at commercial hazardous waste disposal facilities located in the State of Alabama must comply with ADEM Admin Code R. 335-14-3-.08, Appendix I, and Appendix II.

(2) Reserved.

Author: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, §§ 22-30-11, 22-30-13, 22-30-14 and 22-30D-4.

History: July 25, 2003.

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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**CHAPTER 335-16-4
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335-16-4-.01 Purpose

335-16-4-.02 Initial Investigation

335-16-4-.01 Purpose. To provide a mechanism that allows for the initial investigation of existing drycleaning facilities, abandoned drycleaning facilities and wholesale distribution facilities that may be contaminated with drycleaning agents.

Authors: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, § 22-30D-4 and 22-30D-5.

History: July 25, 2003.

335-16-4-.02 Initial Investigation.

(1) For sites at which a release or releases have been confirmed, or sites where contamination is suspected to exist, the owner or operator shall submit a report to the Department describing the release(s) with information that shall include:

- (a) The actual or estimated timeframe(s) that the release(s) may have occurred;
- (b) The type(s) of hazardous constituents released; and
- (c) The approximate or actual amount of hazardous constituents released.

(2) The purpose of the Initial Investigation is to gather sufficient information about the site to allow the Department to prioritize the site.

(3) The Initial Investigation shall be performed according to the criteria established below, unless a Work Plan describing an alternate scope is approved by the Department.

(a) Owners or operators performing an Initial Investigation must obtain and provide information about the site and the nature of the release. At a minimum, an Initial Investigation shall include the following:

1. Characterization of surrounding population, e.g., urban, rural residential;

2. Results of a complete well inventory within a 1500 feet radius of the site and also the location of all other public water supply wells within a 1 mile radius. The inventory shall include the location, and where available, information on the depth, elevation, aquifer, screened zones, and ownership of each well;

3. Results of a receptor survey to include a description of any potential or real receptors of drycleaning-agent contamination. This description should include the hydro-geologic environment, the type and nature of geologic materials, location of surface waters, surrounding land and water users, and the location of all underground utilities, water lines, sewers or other conduits near the Site or within the suspected area of impact that could impact the migration of contaminants;

4. Groundwater samples collected from the first significant water-bearing zone likely to exhibit contamination should be analyzed to assess the groundwater impact at a minimum of one up-gradient and three down-gradient locations. In the event of the discovery of free-phase drycleaning agent, the Department shall be notified immediately. The product should be described to provide information regarding its likely fate-and-transport characteristics, and all proposed Initial Investigation sampling within or through this area postponed until:

(i) The site-specific hydrogeology is adequately characterized including the potential for hydraulic interconnection with lower aquifers;

(ii) The properties of the product are adequately characterized to allow for the area to be investigated using techniques that will not exacerbate the extent of contamination; and/or

(iii) The feasibility of interim free-phase recovery or remediation activities can be evaluated; and

5. Soil and vapor samples should be collected, as appropriate, in areas most likely to have been impacted by a drycleaning agent release.

(b) All monitoring wells must be constructed in a manner acceptable to the Department. Closure of wells shall be in accordance with acceptable well abandonment procedures.

(c) All temporary monitoring wells, soil borings, or direct-push technology borings used to collect grab groundwater samples must be properly closed using acceptable abandonment procedures.

(d) All selected media samples shall be analyzed for parameters which are appropriate to the nature of the drycleaning agents and their degradation products.

(e) Initial Investigations shall be performed and certified by a Board approved geologist or engineer.

(4) Following the Initial Investigation, the eligible entity shall submit the results, including the results of any other investigation(s), to the Department.

Author: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, § 22-30D-4.

History: July 25, 2003.

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**CHAPTER 335-16-5
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335-16-5-.02 Performance Standards

335-16-5-.01 General Provisions.

- (1) Any eligible entity shall not be required to:
 - (a) Obtain any State permit or engage in closure, post closure, or corrective action pursuant to the AHWMMMA;
 - (b) Establish or maintain any financial assurance;
 - (c) Become obligated to pay for any costs, except for the deductible set forth in Code of Alabama, 1975 §22-30D-9, in connection with contamination occurring at any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or at the real property of any impacted third party, or any adjacent land owner(s) which may have failed to operate as a permitted treatment, storage or disposal facility as defined under AHWMMMA; or
 - (d) Replace any drycleaning unit that was in operation prior to May 24, 2003 unless required by ADEM Admin. Code Regulations or by any federal laws promulgated by the United States Environmental Protection Agency.
- (2) Any eligible entity shall be required to:
 - (a) Submit a report to the Department of any actual or suspected contamination.
 - (b) Commence initial investigation and, if necessary assessment remediation activities.
 - (c) Submit as required, all necessary plans and reports as described in 335-16-6.
 - (d) Comply with generator waste management requirements of 335-16-3.

Authors: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, §§ 22-30D-4 and 22-30D-9.

History: July 25, 2003.

335-16-5-.02 Performance Standards. Compliance with performance standards for new drycleaning facilities are required upon the effective date of these regulations. Compliance with performance standards for existing facilities shall occur no later than May 23, 2005, and a schedule for the implementation of the standards shall be submitted to the Department within 60 days of the adoption of these regulations. The performance standards at a minimum shall include the following:

(a) Any person who generates regulated waste(s) that contain drycleaning agent(s) at a drycleaning facility or wholesale distribution facility shall ensure delivery of such waste(s) to a facility that is legally authorized to manage or recycle waste(s) that contain drycleaning agents;

(b) Release of wastewater containing drycleaning agent from drycleaning facilities to any sanitary sewer or septic tank, any land or ground application thereof, or any discharge to waters of the State is not authorized;

(c) Mandatory reporting of all releases of reportable quantities of drycleaning agent to the Department;

(d) All drycleaning agents or wastes containing drycleaning agents shall be stored in closed containers and handled so to minimize the risk of leakage or spillage;

(e) Dikes or other containment structures shall be installed around each drycleaning machine and each drycleaning agent or waste storage area, such that the structures shall be capable of containing a release of drycleaning agent;

(f) All containment structures shall be constructed of materials which are impervious to drycleaning agents;

(g) All drycleaning agents shall be delivered to drycleaning machines via closed or direct-coupled systems; and

(h) If applicable, compliance with the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (40 CFR 63, subpart M) and adopted by the Department as ADEM Admin. Code Rule 335-3-11-.06(12).

Authors: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, §§ 22-30D-4.

History: July 25, 2003.

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
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**CHAPTER 335-16-6
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335-16-6-.02 Property Remediation
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335-16-6-.01 Property Assessment.

(1) Content of the Property Assessment Plan. A property assessment plan submitted by any eligible entity shall describe in sufficient detail those actions planned for the development of information necessary to perform a risk assessment or for the identification of applicable remediation requirements for the site by utilizing criteria found in appropriate risk-based corrective action guidance. If necessary, the assessment plan shall provide for the implementation of applicable response actions and/or land use controls. The plan should describe the methods to be used to determine the type and the amount of contamination and include the delineation of soil and groundwater contamination discovered or known to exist on-site.

(2) Approval and Implementation of the Property Assessment Plan. Upon the Department's approval of the property assessment plan, the eligible entity shall implement the plan in accordance with the approved schedule.

(3) Modification of the Property Assessment. If at any time the eligible entity or the Department determines that any element of an approved assessment plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable remediation requirements for the qualifying property, the eligible entity shall modify the approved plan and obtain approval of the proposed modification.

(4) Termination of Activities. If at any time the eligible entity determines that any element of an approved property assessment plan must be modified in order to terminate activities at the property for any reason, the eligible entity shall notify the Department and obtain approval of the proposed modification.

(5) Assessment Report. Within 30 days of completion of those activities specified in the approved assessment plan, an eligible entity shall submit to the Department a report of the findings from the assessment, which may include a recommendation for applying remediation requirements to the

property. If applicable, concurrence by the Department with the report will move site to remediation phase.

Author: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, § 22-30D-4.

History: July 25, 2003.

335-16-6-.02 Property Remediation.

(1) Remediation Plan Submission. A remediation plan submitted by an eligible entity shall describe in sufficient detail those actions, including remedial activities and land use controls, if appropriate, which are planned to satisfy the remediation requirements for the qualifying property.

(2) Content of Remediation Plan. The plan must identify steps necessary to perform remediation activities for the site. The remediation plan at a minimum must include the following:

(a) A description of remediation to be performed at each area of known contamination at the site will be remediated;

(b) An estimate of the maximum inventory of remediation wastes/contaminated media that will be present on-site during remediation operations;

(c) A detailed description of the methods to be used during the remediation, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all remediation waste, identification of and the type(s) of off-site solid and/or hazardous waste management unit(s) to be used, if applicable;

(d) A detailed description of the process to remove or decontaminate all hazardous residues and contaminated containment system components, equipment, structures, and soils during remediation including, but not limited to:

1. Procedures for cleaning equipment and removing contaminated soils;

2. Methods for sampling and analyzing surrounding soils; and

3. Criteria for determining the extent of remediation necessary to satisfy the remediation requirements;

(e) A detailed description of other activities necessary during the cleanup period to ensure that the remedial activities satisfy remediation performance standards. This description may include, but is not limited to, groundwater monitoring, leachate collection, and run-on and run-off control;

(f) A schedule for remediation of known areas of contamination and if necessary, for remediation of the entire facility. The schedule must include, at a minimum, the total time required to remediate each known area of contamination and the time required for intervening remediation activities which will allow tracking of the progress of the remediation; and

(g) An estimate of the expected year that the remediation process will be complete for eligible sites.

(3) Remediation levels. Target remediation levels may be based on specific requirements of relevant environmental laws or regulations and/or based upon the results of a site-specific risk assessment. Remediation levels based upon a risk assessment must consider the site and all surrounding areas that may be impacted. The risk assessment must reflect current and derived in a manner consistent with Department or Environmental Protection Agency guidelines for assessing human and environmental health risks from hazardous constituents.

(4) Remedial Action Measures. Remediation levels shall be set in accordance with 335-16-6-.02(3) for all media, for all hazardous constituents, a subset of hazardous wastes, or for those hazardous constituents that the eligible entity or the Department has reason to believe may have been released at the facility. Should the concentration of a hazardous constituent(s) in an aquifer, surface water, soils, sediments or air exceed its remediation level for any environmental medium, the Department may require the remediation plan to include measures as necessary to protect human health and the environment.

(5) Property Use Considerations.

(a) A site shall be deemed to have met the requirements for unrestricted use if the remedial levels are derived in a manner consistent with Department or Environmental Protection Agency guidelines for assessing human and environmental health risks from hazardous constituents.

(b) For sites that do not achieve the unrestricted use classification, appropriate restrictions on future site use shall be applied. Restrictions shall include, but are not limited to, institutional and engineering controls. The restrictions imposed upon a site will be media-specific, i.e. soil and groundwater, and may vary according to site-specific conditions. All restrictions on use necessary to attain this standard shall be described in the certification of compliance or remediation as provided in 335-16-6-.03.

(6) Remediation Plan Amendment. The eligible entity may amend the remediation plan at any time prior to the notification of remediation of the site. An eligible entity with an approved remediation plan must submit a written request to the Department to modify the approved plan. The written request must include a copy of the amended plan.

(a) The eligible entity must amend the remediation plan whenever:

1. Changes in operating plans or facility design affect the remediation plan;

2. There is a change in the expected year of remediation, if applicable;

3. In conducting remediation activities, unexpected events require a modification of the remediation plan; and/or

4. The eligible entity determines that it is necessary or advisable to make changes and/or deviations in remediation requirements that affect either remediation activities or the degree of remediation initially proposed.

(b) An eligible entity with an approved remediation plan shall submit the modified plan to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 30 days after an unexpected event has occurred which has affected the remediation plan. If an unexpected event has occurred during the remediation period, the eligible entity shall submit the modified plan no later than 30 days after the unexpected event.

(c) If at any time an eligible entity determines that any element of an approved remediation plan must be modified in order to terminate activities at the property for any reason, the eligible entity shall notify the Department and obtain approval of the proposed modification.

(d) The Department may request modifications to the plan under the conditions described in 335-16-6-.02(8)(b) or 335-16-6-.02(8)(c). An eligible entity with an approved remediation plan shall submit the modified plan within 60 days of the request from the Department or within 30 days if an unexpected event occurs during remediation.

(7) Processing of Remediation Plan.

(a) The Department shall determine the completeness of every remediation plan submitted for approval using the requirements of 335-16-6-.02(2). Upon completion of the review, the Department shall notify the eligible entity in writing after determining that the plan is complete. If the plan is incomplete, the Department:

1. Shall list the information necessary to make the plan complete;

2. Shall specify a date for submitting the necessary information; and

3. May request any information necessary to clarify, modify, or supplement previously submitted material.

(b) Once a remediation plan is determined to be complete, the Department will provide the opportunity for public input as set forth by 335-16-7-.02(2).

(8) Implementation of Remediation Plan.

(a) Upon the Department's approval of the remediation plan, the eligible entity shall then implement the plan.

(b) Should the Department determine activities at the property are not consistent with the remediation plan, the Department may, after reasonable opportunity to rectify the deficiency, revoke liability protection by providing the eligible entity with written notification specifying the basis for making such determination and requesting modification and resubmission of a modified plan or an opportunity to address any deficiencies in implementing the remediation plan within a reasonable specified time.

(c) Should the eligible entity or the Department determine that any element of an approved remediation plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable remediation requirements for the qualifying property, the eligible entity shall modify the approved plan and obtain approval of the proposed modification.

(d) An eligible entity shall keep records of any test results, waste analyses, determinations made in accordance with the property assessment plan and/or the property remediation plan, and of off-site disposal locations, waste types and quantities for a period of three years.

(9) Removal of Wastes and Decontamination or Dismantling of Equipment. Nothing in 335-16-4 shall preclude the eligible entity from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved remediation plan at any time before or after notification of remediation.

(10) Certification of Compliance. Within 60 days of completion of remediation, the eligible entity shall submit to the Department, by registered mail, a certification that the area of contamination, unit, or the entire facility, as applicable, has been remediated in accordance with the specifications in the approved remediation plan. Certain information required by 335-16 involves the practice of engineering and/or land surveying, as those terms are defined in Code of Alabama 1975, as amended, §§ 34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Alabama 1975, as amended, §§ 34-41-1 to 34-41-24. It is the responsibility of any person preparing or submitting such information to ensure compliance with these laws and any regulations promulgated thereunder, as may be required by the State Board of Registration for Professional Geologists. All submissions, or parts thereof, which are required by State law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

(11) Remediation Status Report. In addition to the requirements of 335-16-6-.02(10), an eligible entity shall, upon completion of those activities specified in the remediation plan, submit to the Department a compliance status report certifying the compliance of the qualifying property with the

remediation requirements. The qualifying property shall be deemed in compliance with the remediation requirements upon the eligible entity's receipt of the Department's written "Letter of Concurrence" with the property remediation report. If the remediation was conducted prior to submission of the application, all pertinent information from the original assessment and remediation plans shall be incorporated in the property remediation status report.

(12) Restricted Use Property. For those properties that are cleaned to standards less stringent than those required for unrestricted residential use, the property owner shall comply with the requirements of 335-16-7-.03(3) within 60 days of the submission of the certification of compliance.

(13) Relief from Liability. Upon the Department's concurrence with the certification of compliance, the eligible entity shall be relieved of further liability to the State for the restoration of the property under Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Alabama 1975, and for any contamination identified and addressed in reports, assessments, or plans submitted to and approved by the Department to demonstrate compliance with the approved remediation levels.

Authors: Lawrence A. Norris; Pamela R. Wilson.

Statutory Authority: Code of Alabama 1975, § 22-30D-9.

History: July 25, 2003.

335-16-6-.03 Certification of Compliance.

(1) Acceptance of the Certification of Compliance. The Department shall review all reports and the required certification of compliance submitted under 335-16-6-.02(10) to demonstrate that no further action is required by the eligible entity to protect human health and the environment. Upon concurrence, the Department shall issue to the eligible entity a "Letter of Concurrence". If the eligible entity is satisfactorily maintaining engineering controls, remediation systems, or post-closure care, or if non-permanent institutional controls are utilized, the Department shall issue the eligible entity a conditional "Letter of Concurrence". The Department may authorize an eligible entity to conduct a phased response only when, in the Department's evaluation, the schedule is reasonable.

(2) Deed Records. The eligible entity shall file a copy of the certification of compliance and the conditional "Letter of Concurrence" in the site's deed record on the Department's behalf. The eligible entity must file the copy of the certification of compliance and the conditional "Letter of Concurrence" prior to the sale or transfer of the property or no later than 60 days after the date of issuance of the letter. The eligible entity shall file a statement in the deed records stating that the certification of compliance and the "Letter of Concurrence" supersede prior deed certification requirements.

(3) Revocation of "Letter of Concurrence". The "Letter of Concurrence" may be revoked by the Department at any time in the event that contamination posing an unacceptable risk to human health and the environment is rediscovered on site, or discovery that the submitted certification of compliance was based on information that was materially false, inaccurate or misleading. The eligible entity shall be notified in writing by certified mail of the proposed revocation. The eligible entity shall respond within 30 days upon receipt of the letter.

(4) Sovereign Immunity. By issuance of the "Letter of Concurrence", the Department does not waive sovereign immunity.

(5) Release from Liability. Upon the Department's approval of the certification of compliance, an eligible entity who is not a responsible person, at the qualifying property, shall not be liable to the state or any third party for costs incurred in the investigation or remediation of, equitable relief relating to, or damages resultant from, in whole or in part, a preexisting release at the qualifying property, including, but not limited to, any liability to the state for the remediation of the property under Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Alabama 1975, or a new release of a substance, constituent, or material which had been part of a preexisting release at the property, unless such new release results from noncompliance with an approved property assessment plan, or remediation plan or from the negligent, wanton, willful, or intentional conduct of the eligible entity.

Authors: Lawrence A. Norris; Pamela R. Wilson.

Statutory Authority: Code of Alabama 1975, §§ 22-30D-5, and 22-30D-9.

History: July 25, 2003.

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION - DRYCLEANING TRUST FUND PROGRAM**

**CHAPTER 335-16-7
CLEANUP INVENTORY LIST**

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335-16-7-.01 Purpose.

(1) To provide a mechanism that allows for public participation in the remediation process. Remediation plans for sites covered under this program are placed on public notice to allow the general public the opportunity to comment. The public notice aids in the education of the general public concerning matters of possible contamination.

(2) To compile a Cleanup Inventory List of existing sites currently undergoing assessments and cleanups and to provide a mechanism for the addition and removal of properties to the Cleanup Inventory List, including the procedures for the filing in the deed records of the applicable probate court.

Authors: Lawrence A. Norris; Pamela R. Wilson.

Statutory Authority: Code of Alabama 1975, § 22-30D-4.

History: July 25, 2003.

335-16-7-.02 Public Participation.

(1) Public notification of remediation. Once a remediation plan is determined to be complete, the eligible entity will provide the public, through a newspaper notice, the opportunity to submit written comments to the Department on the plan no later than 30 days from the date of the notice. The Department will also, in response to a legitimate request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a remediation plan. The Department will give public notice of the hearing at least 30 days before it occurs.

(2) Public notice procedures. Public notice of activities shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under 335-16-7-.02(2)(a)2. may waive his right to receive notice):

1. The Department;
 2. Persons on a mailing list developed by:
 - (i) Including those who request in writing to be on the list;
 - (ii) Soliciting persons for area lists from participants in past cleanup proceedings in that area; and
 3. Governmental Agencies:
 - (i) To any unit of local government having jurisdiction over the area where the drycleaning facility, abandoned drycleaning facility, wholesale distributor, impacted third party, or adjacent landowner(s) property is located; and
 - (ii) To each State agency having any authority under State law with respect to the construction or operation of such facility.
- (b) Publication of a notice in a daily or weekly major local newspaper of general circulation. The newspaper display advertisement should be located at a spot in the paper calculated to give effective notice to the general public, and should be large enough to be seen easily by the reader. In addition to the display ads, eligible entity is encouraged to place advertisements in free newspapers, community bulletins, newsletters, and other low-cost or free publications.
- (3) Contents. All public notices shall contain the following minimum information:
- (a) Name and address of the office processing the remediation action for which the notice is being given;
 - (b) Name and address of the eligible entity and, if different, of the site or activity regulated by the remediation action;
 - (c) A brief description of the business conducted at the site or activity described in the remediation application;
 - (d) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft plan; and
 - (e) A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final remediation decision.
- (4) Departmental Review. After considering any comments submitted during the public comment period and public hearing (if held), the Department

will approve or disapprove the remediation plan within 30 days of the close of the comment period. In the event that the remediation plan is not approved, the Department shall provide the eligible entity with a detailed statement of reasons for the denial. The eligible entity must modify the remediation plan or submit a new remediation plan for approval within 30 days after receiving such written statement. If the Director modifies the remediation plan, this modified remediation plan becomes the approved remediation plan. A copy of the modified remediation plan with a detailed statement of reasons for the modifications will be mailed to the eligible entity.

Authors: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, § 22-30-11.

History: July 25, 2003.

335-16-7-.03 Cleanup Inventory List.

(1) Cleanup Inventory List. The Department shall compile and update as necessary an inventory of all qualifying properties for which a property assessment plan or remediation plan has been approved by the Department. No later than July 1st of each year, the Department shall send a copy of the inventory with the properties listed by county to the clerk of each probate court of the state, who shall place and maintain the most current copy of the inventory in the room or rooms in which the deed records of the county are kept. The inventory shall be called the Cleanup Properties Inventory. The inventory shall include all the following information:

- (a) The name of the property or another description identifying the property.
- (b) The location of the property.
- (c) The name of the owner of the property at the time of the property's inclusion in the inventory.
- (d) A general description of the property assessment or remediation plan.
- (e) A description of the contaminant types and levels to which the site has been remediated if the levels are less stringent than those required for unrestricted residential use.

(2) Placement on the Cleanup Inventory List. Upon the Department's approval of the property assessment and/or the remediation plan, the property shall be placed on the cleanup inventory list.

(3) Restricted Use.

(a) The property owner of any property listed on the inventory which is designated as having been cleaned up to standards less stringent than those required for unrestricted residential use shall include the following notice in

any deed, mortgage, deed to secure debt, lease, rental agreement, or other instrument given or caused to be given by the property owner which creates an interest in the property: "This property has been listed on the state's Cleanup Properties Inventory and has been cleaned up to standards less stringent than those required for unrestricted residential use due to the presence of substances regulated under state law. Certain uses of this property may require additional remediation. Contact the property owner or the Alabama Department of Environmental Management for further information concerning this property."

(b) If warranted by further active or passive remediation that results in the reduction of contamination to unrestricted residential use levels, this notice may be removed in accordance with 335-16-7-.03(4).

(4) Unrestricted Use. Upon a written determination by the Department that a property has been cleaned up to standards suitable for unrestricted residential use, the notices required by 335-16-7-.03(3)(a) shall be removed from the subject property records for the property.

Author: Lawrence A. Norris.

Statutory Authority: Code of Alabama 1975, §§ 22-30D-4 and 22-30D-11.

History: July 25, 2003.